

SPECIAL USE PERMIT

FILE NO.	SP20-006
LOCATION OF PROPERTY	481 Curie Drive
ASSESSOR'S PARCEL NO. (APN)	689-45-068
ZONING DISTRICT	R-1-8 Single-Family Residence
GENERAL PLAN DESIGNATION	Residential Neighborhood
PROPOSED USE	Special Use Permit request to allow a retaining wall of varying height ranging from six (6) to eight (8) feet, located in the side and the back yard at an existing single family residence on an approximately 0.17-gross acre site
ENVIRONMENTAL STATUS	Exempt per CEQA Guidelines 15303 for New Construction or Conversion of Small Structures
OWNER/APPLICANT	Sergiu Morosan 481 Curie Drive San Jose CA 95123

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

1. **Project Description.** This Special Use Permit request is to allow a retaining wall of varying height ranging from six (6) to eight (8) feet, located in the side and the back yard at an existing single family residence on an approximately 0.17-gross acre site
2. **Site Description and Surrounding Uses.** The 0.17-gross acre subject site is a rectangular lot. It is located on the north side of Curie drive, approximately 200 feet westerly of the intersection of Curie Dive and Hilton Way. The site is currently occupied by a single-family residence. The average slope of the backyard is approximately 40%. The site is surrounded by single-family residences to the north, south and west side.
3. **General Plan.** The subject site is designated Residential Neighborhood on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods, including both the suburban and traditional residential neighborhood areas which comprise most of its developed land. The intent of this designation is to preserve the existing character of these neighborhoods and to strictly limit new development to infill projects which closely conform to the prevailing existing neighborhood character as defined by density, lot size and shape, massing and neighborhood form and pattern. The proposed construction of retaining walls will not alter the aesthetic and residential character of the existing neighborhood.

4. **Zoning.**

- a. The subject site is located in the R-1-8 Single Family Residence Zoning District. Single family detached residence is an allowed use in this zoning district. The proposed project will not alter the use of the property. Accessory structures such as a retaining walls are allowed in single family residential zoning district.
- b. Note 4 of Table 20-70 of Section 20.30.500 of the San José Municipal Code states that retaining walls over two feet in height may be approved with a Special Use Permit.

5. **CEQA.** Under the provisions of Section 15303 (New Construction or Conversion of Small Structures) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Section 15303(e) consists of exemption for accessory structures including garages, carports, patios, swimming pools and fences. The project proposes construction of around 8 feet tall retaining walls in the side and rear yards of the property which will retain soil and provide ground stability for yard space, accessory structures such as decks, patios, etc., in the side and back yard of the primary dwelling. The project got approval from the City Geologic Engineer for safe construction and, therefore, is exempt from further environmental review.

FINDINGS

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

1. **Special Use Permit Findings.** Based on the analysis of the above facts with respect to the Special Use Permit findings (Section 20.100.800), the Director of Planning finds that:
 - a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and
 - b. The Special Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and
 - c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; an

Analysis: The Special Use Permit is consistent with the General Plan in that the proposed site modification are limited in nature and would enable an existing single-family residence to provide site and landscaping improvements. The retaining wall is located in the side and the backyard and is not visible from the street. The proposed retaining wall would not change the residential character of the existing development. Therefore, the proposed project for one new retaining wall is consistent with the provisions of the policy. The wall is not subject to any Specific Plan, conforms to the Zoning ordinance, and all other provisions of the San José Municipal Code in terms of location, height, material, etc.

- d. The proposed use at the location requested will not:
 - i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or

- iii. Be detrimental to public health, safety, or general welfare; and

Analysis: The proposed retaining wall would not have a detrimental effect on the surrounding community in that the taller sections of the wall would not be visible from the public right-of-way nor add massing or density to the existing project site. The proposed wall is intended to enhance the space and aesthetics of the site, and the geologic stability of the subject residence and the neighboring residences.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

Analysis: The subject size is adequate in size to accommodate the proposed retaining walls and no other new structures or uses are proposed. The proposed wall would be integrated into the existing development and landscaping on site.

- f. The proposed site is adequately served:

- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
- ii. By other public or private service facilities as are required.

Analysis: The site is adequately served by a driveway with access to Echo Ridge Court. The proposed retaining wall would not create additional traffic on site.

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The project is exempt from further environmental review pursuant to Section 15303(e) of the California Environmental Quality Act (CEQA). The construction of the new retaining walls got approval from the City Geologic Engineer and are engineered for safe construction. The walls will not generate any noise, fumes or odor or any other negative environmental effects, and will not, therefore, adversely impact the adjacent property or properties. Department of Public Works has reviewed the project and provided a revised Final Memorandum.

In accordance with the findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and

- b. Agreement of the applicant to be bound by, to comply with, and do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such permit.
2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Conformance with Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, "Grading and Drainage Plan 481 Curie Dr San Jose CA," undated, on file with the Department of Planning Building and Code Enforcement.
5. **Anti-Graffiti.** During construction, the applicant shall remove all graffiti from buildings, walls and other surfaces within 48 hours of defacement. Upon project completion and/or transfer of ownership, the property owner, and/or Maintenance District shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
6. **Building Materials.** All building materials are to be those specified on the Approved Plan Set.
7. **Hours of Construction.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend buildings, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
10. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.
 - a. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the

storm drain system from the site. An erosion control plan may be required with the grading application.

- ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
 - iii. A soils report must be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
 - iv. A Geologic Hazard Clearance (GHC) was issued on June 18, 2020.
- b. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls to minimize stormwater pollutant discharges.
 - c. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area, but **will not** create and/or replace one acre or more of impervious surface. The project is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
 - d. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
 - e. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, less previous credits, are due and payable.
 - f. **Street Improvements:** Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
11. **Building Clearance for Issuing Permits.** Prior to issuance of a building permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* The permit file number, SP20-006, shall be printed on all construction plans submitted to the Building Division.
 - b. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permit and applicable conditions.

Revocation, Suspension, Modification. This Special Use Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Special Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. a violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **16th day of September, 2020.**

Rosalynn Hughey, Director
Planning, Building, and Code Enforcement

Deputy